HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No. 1185 OF 2006

Between:

M/s Susilpa Builders and Planners Pvt. Ltd.,
Banjara Hills, Hyderabad

..... Appellant

AND

Andhra Bank, Ameerpet Branch,
Hyderabad rep. by its Branch Manager & others

.....Respondents

:: J U D G M E N T::

Counsel for the appellant : Shri A. Sudarshan Reddy

Dated: 10.11.2006

Per G.S.SINGHVI, CJ

Having failed to persuade the learned Single Judge to entertain the writ petition filed by it under Article 226 of the Constitution of India for quashing the proceedings initiated by Andhra Bank (for short 'the bank') under Sections 13 and 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act'), the appellant has preferred this appeal.

The appellant constructed apartments on premises bearing municipal Nos.42-22 comprised in Survey Nos.353/1, 353/3 and 353/4 situated in Moula Ali Village, Malkajgiri Mandal, Ranga Reddy District and sold the same to respondent Nos.2 to 12 and five other persons, who had applied to the bank for sanction of loan. The appellant is said to have agreed to sell the apartments on the assurance allegedly given by the bank for disbursement of the loan amount. For securing repayment of loan, respondent Nos.2 to 12 mortgaged the unfinished apartments to the bank. Due to their failure to repay the loan amount, the bank classified their accounts as non-performing assets and issued notices under Section 13 (2) of the Act requiring them to pay the balance amount within sixty days with an indication that if they failed to do so, possession of the mortgaged property will be taken. After two months, the bank issued notices under Section 13 (4) and then filed applications in the Court of Chief Metropolitan Magistrate

under Section 14 of the Act.

The appellant questioned the notice issued by the bank in Writ Petition No.20338 of 2006. It also prayed for quashing proceedings of Criminal Miscellaneous Petition Nos.98 to 107 and 109 of 2006 pending in the Court of Chief Metropolitan Magistrate, Cyberabad and for issue of a direction to the bank to pay the balance amount in terms of loan agreement dated 16-9-2002.

The learned Single Judge dismissed the writ petition by recording the following observations:

> "It is clear from the material on record that the housing loans availed by the respondents 2 to 12 are secured by the mortgage of the flats in question and that respondents 2 to 12 having availed the loan facility, committed default in payment of monthly instalments. It is also clear that though notice under Section 13(2) of the Act was published on 10.11.2004, the respondents 2 to 12 failed to respond and on the other hand, they resisted taking over possession of the secured assets. Hence, the 1st respondent-Bank filed separate petitions under Section 14 of the Act against respondents 2 to 12, in which the learned Chief Metropolitan Magistrate passed orders appointing an Advocate-Commissioner to take possession of the flats in question long back. Except the statement in the affidavit no other material is placed before this Court that the petitioner is still continuing in possession of the flats sold to the respondents 2 to 12.
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> At any rate, since the petitioner is not a party to the loan transactions between the 1st respondent-Bank and respondents 2 to 12, there is no privity of contract between the petitioner-Company and the 1st respondent-Bank and this writ petition seeking to interdict the proceedings under the Act appears to be misconceived."

While disposing the writ petition, the learned Single Judge gave liberty to the appellant to file appeal under Section 17 of the Act.

Feeling dissatisfied with the order of the learned Single Judge, the appellant has preferred this appeal under Clause 15 of the Letters Patent.

Shri A. Sudershan Reddy submitted that the learned Single Judge should not have relegated the appellant to the alternative remedy under Section 17 of the Act because the relief sought in the writ petition was essentially for issue of a direction to the bank to pay the balance amount of Rs.2.50 lakhs for each apartment and the prayer for quashing the proceedings of the criminal miscellaneous petitions pending in the Court of Chief Metropolitan Magistrate, Cyberabad was only incidental.

In our opinion, there is no merit in the submission of Shri A.Sudarshan Reddy and the appeal is liable to be dismissed summarily. Sections 13 (1) to (4), 14, 17 (1) to (4) of the Securitisation Act and Rule 3 and 4 of the Rules which have bearing on the adjudication of this appeal read as under.

Provisions of the Securitisation Act.

"13. **Enforcement of security interest**

(1) Notwithstanding anything contained in Section 69 or Section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor any be enforced, without the intervention of court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require, the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4)

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower.

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under Section 17 or the Court of District Judge under Section 17A.

(4) In case the borrower fails to discharge his liability in full

within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt;

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt.

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset.

(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking

possession of control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-

(a) take possession of such asset and documents relating thereto; and;

(b) forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub- section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

17 Right to appeal

(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or his authorised officer under this Chapter, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken.

(Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.)

(**Explanation**:- For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.)

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made there under.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made there under, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one of or more measures referred to in sub-section (4) of Section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of Section 13, is in accordance with the provisions of this Act and the rules made there under, then, notwithstanding anything contained in any other law for

the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of Section 13 to recover his secured debt.

Securitisation Rules:

3. **Demand notice**:- (1) The service of demand notice as referred to in sub-section (2) of Section 13 of the Ordinance shall be made by delivering or transmitting at the place where the borrower or his agent, empowered to accept the notice or documents on behalf of the borrower, actually and voluntarily resides or carries on business or personally works for gain, by registered post with the service or by Speed Post or by courier or by any other means of transmission of documents like fax message or electronic mail service:

Provided that where authorized officer has reason to believe that the borrower or his agent is avoiding the service of the notice or that for any other reason, the service cannot be made as aforesaid, the service shall be effected by affixing a copy of the demand notice on the outer door or some other conspicuous part of the house or building in which the borrower or his agent ordinarily resides or carries on business or personally works for gain and also by publishing the contents of the demand notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality.

(2) Where the borrower is a body corporate, the demand notice shall be served on the registered office or any of the branches of such body corporate as specified under sub-rule (1).

(3) Any other notice in writing to be served on the borrower or his agent by authorized officer, shall be served in the same manner as provided in this rule.

(4) Where there are more than one borrower the

demand notice shall be served on each borrower.

4. Procedure after issue of notice:- If the amount mentioned in the demand notice is not paid within the time specified therein, the authorized officer shall proceed to realize the amount by adopting any one or more of the measures specified in sub-section (4) of Section 13 of the Ordinance for taking possession of movable property, namely:-

(1) Where the possession of the secured assets to be taken by the secured creditor are movable property in possession of the borrower, the authorized officer shall take possession of such movable property in the presence of two witnesses after a Panchanama drawn and signed by the witnesses as nearly as possible in Appendix I to these rules.

(2) After taking possession under sub-rule (1) above, the authorized officer shall make or cause to be made an inventory of the property as nearly as possible in the form given in Appendix II to these rules and deliver or cause to be delivered, a copy of such inventory to the borrower or to any person entitled to receive on behalf of borrower.

(3) The authorized officer shall keep the property taken possession under sub-rule (1) either in his own custody or in the custody of any person authorized or appointed by him, who shall take as much care of the property in his custody as owner of ordinary prudence would, under the similar circumstances, take of such property:

Provided that if such property is subject to speedy or natural decay, or the expense of keeping such property in custody is likely to exceed its value, the authorized officer may sell it at once.

(4) The authorized officer shall take steps for

preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

(5) In case any secured asset is:-

(a) a debt not secured by negotiable instrument; or

(b) a share in a body corporate;

(c) other movable property not in the possession of the borrower except the property deposited in or in the custody of any Court or any like authority, the authorized officer shall obtain possession or recover the debt by service of notice as under:-

a. in the case of a debt, prohibiting the borrower from recovering the debt or any interest thereon and the debtor from making payment thereof and directing the debtor to make such payment to the authorized officer; or

b. in the case of the shares in a body corporate, directing the borrower to transfer the same to the secured creditor and also the body corporate from not transferring such shares in favour of any person other than the secured creditor. A copy of the notice so sent may be endorsed to the concerned body corporate's Registrar to the issue or share transfer agents, if any;

c. in the case of other movable property (except as aforesaid), calling upon the borrowers and the person in possession to hand over the same to the authorized officer and the authorized officer shall take custody of such movable property in the same manner as provided in sub-rules (1) to (3) above;

d. movable secured assets other than those covered in this rule shall be taken possession of by the authorized officer by taking possession of the documents evidencing title to such secured

assets.

An analysis of the above reproduced provisions show that by virtue of non-obstante clause contained in sub-section (1) of Section 13 any security interest created in favour of any secured creditor may be enforced without the intervention of the court or tribunal. In terms of sub-section (2) the secured creditor can issue notice to the borrower requiring the latter to discharge his liabilities within sixty days from the date of notice. Such notice is required to be delivered in accordance with Rule 3 of the Rules. On receipt of notice issued under sub-section (2), the borrower can make a representation or raise objection against the demand. The secured creditor is required to consider such representation or objection. If it is found that the representation or objection is not acceptable or tenable, then the secured creditor is duty bound to communicate the reasons for non-acceptance to the borrower. If the borrower fails to discharge his liability in full within a period of sixty days specified in sub-section (2), the secured creditor can take recourse to one or the other mode as specified in sub-section (4). One of the modes is to take over the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset. The secured creditor can also appoint any person to manage the secured assets of which possession has been taken over. Any person who may have acquired any of the secured assets from the borrower can also be called upon to pay such sum of money as may be sufficient to pay the secured debt. Section 14 (1) lays down that where the possession of any secured asset is required to be taken

by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor, then he may, for the purpose of taking possession or control of any such secured asset, make an application in writing to the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto is situated or is found for taking possession thereof. On receipt of such request, the Chief Metropolitan Magistrate or as the case may be, the District Magistrate shall take possession of the asset or document and forward the same to the secured creditor. Sub-section (2) of Section 14 empowers the Chief Metropolitan Magistrate or the District Magistrate to take appropriate steps or use, or cause to be used, such force, as may be necessary for taking possession of secured assets and documents relating thereto. Sub-section (3) of Section 14 declares that any action taken by the Chief Metropolitan Magistrate or the District Magistrate under Section 14 shall not be called in question by any court or before any authority. Section 17 which is captioned as "Right to appeal" lays down that any person (including the borrower) aggrieved by any of the measures taken under sub-section (4) of Section 13 by the secured creditor or his authorized officer can make an application to the Debts Recovery Tribunal within forty five days from the date of taking of such measures. Under sub-section (2) of Section 17 the Debts Recovery Tribunal is required to consider whether any of the measures taken by the secured creditor under sub-section (4) of Section 13 for enforcement of security is in accordance with the provisions of the

Act and Rules made there under. If the Tribunal comes to the conclusion that such measure is not in accordance with the provisions of the Securitisation Act and the Rules, then it may require restoration of management of business to the borrower or restoration of possession of the secured assets and declare that the action taken by the secured creditor is invalid. The Tribunal can pass any other appropriate order in regard to the steps taken by the secured creditor under Section 13 (4). If the Tribunal declares that the action taken by the secured creditor is in consonance with sub-section (4) of Section 13, then such creditor can take recourse to one or more of the modes mentioned in Section 13 for the purpose of recovery of secured debts.

A conjoint reading of Section 13 (4) and 14 makes it clear that the source of power to take possession of the secured assets of the borrower can be traced in Section 13 (4) and not under Section 14, which has been enacted as an aid for execution of the decision taken by the secured creditors to take possession of the secured assets or documents. To put it differently, the substantive provision entitling the secured creditor to take possession of the secured assets is contained in Section 13 (4), and Section 14 merely contains a provision to facilitate taking over of possession without any impediment. If a person feels aggrieved by the action of the secured creditor to take possession of the secured asset, then he can file an application under Section 17 (1) before the Tribunal and the Tribunal can, after examining the facts and circumstances of the case and evidence produced by the parties declare that the action taken by the secured creditor is not

inconsonance with Section 13 (4). The Tribunal can also direct the secured creditor to restore possession of the secured assets of the borrower.

The constitutionality of the Act has been upheld by the Supreme Court in **Mardia Chemicals Ltd. v. Union of India**[1] except Section 17 insofar as it provided for deposit of 75% of the disputed amount as a condition precedent to the entertaining of appeal. In the course of the judgment, their Lordships of the Supreme Court observed that the remedy available under Section 17 is not in the nature of an appeal, but is akin to civil suit. This is evinced from the following observations made by the Supreme Court:

> " 59. We may like to observe that proceedings under Section 17 of the Act, in fact, are not appellate proceedings. It seems to be a misnomer. In fact it is the initial action which is brought before a forum as prescribed under the Act, raising grievance against the action or measures taken by one of the parties to the contract. It is the stage of initial proceeding like filing a suit in civil court. As a matter of fact proceedings under Section 17 of the Act are in lieu of a civil suit which remedy is ordinarily available but for the bar under Section 34 of the Act in the present case. We may refer to a decision of this Court in *Ganga Bai* v. *Vijay Kumar*[18] where in respect of original and appellate proceedings a distinction has been drawn as follows: (SCC p. 397, para 15)
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> "There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit,

howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."

In view of the aforementioned judgment of the Supreme Court, Section 17 was substituted by the enforcement of Security Interest and Recovery of Debt Laws (Amendment) Act, 2004 and the amended provision does not contain the requirement of depositing 75% amount as a condition precedent for entertaining the application.

The question whether remedy available under Section 17 is an effective remedy must be answered in affirmative because the said section constitute an integral part of the Act, which has been enacted by the Parliament for ensuring expeditious recovery of the amounts due to the financial institutions like banks etc.

In **A. V. Venkateshwaran v. R.S. Wadhwani**[2], the Constitution Bench of the Supreme Court, while reiterating the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, exhaust the other remedies open to him under the law is not one which bars the jurisdiction of the High Court to entertain the petition, but is a rule evolved by the Courts for the exercise of their discretion, observed as under:

"The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition

under Art.226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est and that in all other cases, Courts should not entertain petitions under Art. 226, or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court."

In **Thansingh Nathmal v. Superintendent of Taxes**[3], another Constitution Bench of the Supreme Court considered the question relating to exercise of discretion by the High Court in entertaining a writ petition despite the availability of alternative remedy and held:

"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary:

it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

In **Baburam v. Zilla Parishad**[4], the Supreme Court reiterated the rule of alternative remedy in the following words:

"When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of

discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted."

Their Lordships then carved out the following two exceptions to the rule of alternative remedy:

1) where proceedings are taken before a Tribunal under a provision of law, which is ultra vires to the Constitution,
2) where the impugned order has been made in violation of the rules of natural justice.

In **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[5], the Supreme Court stated the rule of alternative remedy in the following words:

" Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute alone must be availed of. Under the scheme of the Orissa Sales Tax Act, there is a hierarchy of authorities for granting redress. The petitioners had an equally efficacious alternative remedy by way of an appeal to the Prescribed Authority under sub-section (1) of Section 23, then a second appeal to the Tribunal under sub-section (3)(a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court under Section 24 of the Act. The Act provides for an adequate safeguard against an arbitrary or unjust assessment, such as right to prefer appeal under Section 23 (1) and to apply for stay of recovery under clause (a) of the second proviso to Section 13 (5). Thus the Act provides for a complete

machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226.

In **Champa Lal v. I.T. Commissioner**[6], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[7], **C.I.T. v. Ramendra Nath Ghosh**[8], **Swadeshi Cotton Mills Co. Ltd., v. Government of U.P.**[9], **Gujarat University v. N.U. Rajguru**[10], **State of H.P. v. Raja Mahendra Pal**[11], **L.L. Sudhakar Reddy v. State of A.P.**[12], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[13], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[14], **ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.,**[15] the Supreme Court applied the rule of alternative remedy in different situations. In **Harbanslal Sahnia** (supra) the Supreme Court considered the situations in which the High Court can exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

> "The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: *i*) where the writ petition seeks enforcement of any of the fundamental rights; (*ii*) where there is failure of principles of natural justice; or (*iii*) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See ***Whirlpool Corpn.* v. *Registrar of***

Trade Marks {(1998) 8 SCC 1}. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

The appellant has not shown that its case fall under either of the exceptions enumerated in **Harbanslal Sahnia** (supra). Therefore, we do not find any valid ground or justification to interfere with the order of the learned Single Judge.

In the result, the appeal is dismissed leaving the appellant free to avail remedy by filing application under Section 17 of the Act. The appellant shall also be free to file an application for interim relief.

As a sequel to dismissal of the appeal, W.A.M.P.No.2464 of 2006 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

10.11.2006

svs

[1] (2004) 4 SCC 311
[2] AIR 1961 SC 1506
[3] AIR 1964 SC 1419
[4] AIR 1969 SC 556
[5] (1983) 2 SCC 433
[6] AIR 1970 SC 645
[7] AIR 1970 SC 1980
[8] (1972) 4 SCC 379
[9] (1975) 4 SCC 378
[10] AIR 1988 SC 66
[11] (1999) 4 SCC 43
[12] (2001) 6 SCC 634
[13] (2002) 1 SCC 216
[14] (2003) 2 SCC 107
[15] (2004) 3 SCC 553